

**Plumhoff v. Rickard, --- U.S. --- (2014)**  
**Decided May 27, 2014**

**FACTS:** On July 18, 2004, near midnight, Lt. Forthman (West Memphis, AR, PD) pulled over a vehicle that had only one headlight. Rickard was driving; Allen was the passenger. The officer noticed that there was a large (basketball or head-sized) indentation in the windshield of Rickard's car. He asked Rickard if he'd been drinking, which Rickard denied. Rickard did not produce an OL so the officer asked him to step out of the vehicle. Instead, Rickard "sped away." Lt. Forthman gave chase, joined by Sgt. Plumhoff and Officers Evans, Ellis, Galtelli and Gardner. They tried a "rolling roadblock" to stop him, but were unsuccessful. The vehicles sped toward Memphis, TN, swerving through traffic at speeds in excess of 100 mph. They passed a number of vehicles during the chase.

Rickard exited the expressway in Memphis and shortly afterward, executed a sharp turn that caused him to impact Evans' cruiser. As a result, Rickard's car spun out and struck Plumhoff's cruiser. "Now in danger of being cornered, Rickard put his car into reverse 'in an attempt to escape.'" Evans and Plumhoff approached on foot, and "Evans, gun in hand, pounded on the passenger-side window." At some point, Rickard struck yet another cruiser. Even though he was flush against that cruiser's bumper, he was accelerating and the car was rocking back and forth. Plumhoff fired three shots into Rickard's car; all the while Rickard was reversing in an arc and fleeing down the street. During the turn, Rickard's actions forced Ellis to jump out of the way. Gardner and Galtelli also fired at Rickard's car, a total of 12 shots. "Rickard then lost control of the car and crashed into a building." Both occupants, Rickard and Allen, "died from some combination of gunshot wounds and injuries suffered in the crash that ended the chase."

Rickard's daughter, Whitne, filed suit under 42 U.S.C. §1983 against the officers, the West Memphis mayor and the police chief, alleging excessive force. The officers moved for summary judgment under qualified immunity but were denied by the Sixth Circuit Court of Appeals. An appellate panel ruled that the officers' actions violated the Fourth Amendment and upheld the denial. The officers requested certiorari and the U.S. Supreme Court granted review.

**ISSUE:** Is using deadly force to end a dangerous, high speed pursuit, Constitutional?

**HOLDING:** Yes

**DISCUSSION:** The Court noted that in this case, the officers acknowledged that they shot Rickard but contended that "their conduct did not violate the Fourth Amendment and, in any event, did not violate clearly established law."

Thus, they raise legal issues; these issues are quite different from any purely factual issues that the trial court might confront if the case were tried; decided

legal issues of this sort is a core responsibility of appellate courts, and requiring appellate courts to decide such issues is not an undue burden.

The officers argued two separate points – that “they did not violate Rickard’s Fourth Amendment rights and that, in any event, their conduct did not violate any Fourth Amendment rule that was clearly established at the time of the events in question.” Under Saucier v. Katz, the Court had ruled that “the first inquiry must be whether a constitutional right would have been violated on the facts alleged,” that that was modified somewhat in Pearson.<sup>1</sup> In Pearson, the Court noted that the Saucier procedure was beneficial, but need not be followed rigidly. In the case at bar, the Court began its evaluation “with the question whether the officers’ conduct violated the Fourth Amendment, finding that to be “beneficial” in “develop[ing] constitutional precedent” in an area that courts typically consider in cases in which the defendant asserts a qualified immunity defense.”

The Court began:

A claim that law-enforcement officers used excessive force to effect a seizure is governed by the Fourth Amendment’s “reasonableness” standard.<sup>2</sup> In Graham, we held that determining the objective reasonableness of a particular seizure under the Fourth Amendment “requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” The inquiry requires analyzing the totality of the circumstances.

Using the usual precepts of Graham, the Court noted that it must analyze this situation “from the perspective “of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” This allows “for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.”

The estate executor made two arguments - that the Fourth Amendment did not allow the officers to use deadly force to end the chase and that even if they could fire their weapons at the fleeing vehicle, they “went too far when they fired as many rounds as they did.”

The Court looked to Scott v. Harris, first, which held that ““police officer’s attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.”<sup>3</sup> The Court found “no basis for reaching a different conclusion here.” The record disproved the claim that the chase was over at the time the shooting ended, when in fact, given that Rickard was still actively trying to escape the scene, it was not. The Court agreed that “all that a reasonable police officer

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<sup>1</sup> 533 U.S. 194 (2001); Pearson v. Callahan, 555 U.S. 223 (2009).

<sup>2</sup> See Graham v. Connor, 490 U. S. 386 (1989); Tennessee v. Garner, 471 U. S. 1 (1985).

<sup>3</sup> 550 U.S. 372 (2007)

could have concluded was that Rickard was intent on resuming his flight and that, if he was allowed to do so, he would once again pose a deadly threat for others on the road.” Further, “Rickard’s conduct even after the shots were fired—as noted, he managed to drive away despite the efforts of the police to block his path— underscores the point.” The Court held that it was “beyond serious dispute that Rickard’s flight posed a grave public safety risk, and here, as in Scott, the police acted reasonably in using deadly force to end that risk.”

With respect to the number of rounds fired, the Court noted that “It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.” During the ten seconds encompassing the time the shots were fired, “Rickard never abandoned his attempt to flee.” He managed to drive away and only stopped when he crashed. This was not a situation where the officers “had initiated a second round of shots after an initial round had clearly incapacitated Rickard and had ended any threat of continued flight, or if Rickard had clearly given himself up. But that is not what happened.”

Even though Allen, as his passenger, was put at risk, the Court noted this case was not intended to address that concern. Her “presence in the car cannot enhance Rickard’s Fourth Amendment rights” and “after all, it was Rickard who put Allen in danger by fleeing and refusing to end the chase, and it would be perverse if his disregard for Allen’s safety worked to his benefit.”

Although the ruling in that case precluded the denial of summary judgment, the Court also noted that its decision on Brosseau v. Haugen<sup>4</sup> demonstrated “that no clearly established law precluded [the officers’] conduct at the time in question.” Such cases depend “very much on the facts of each case.” Between the time the events occurred in Brosseau and the events in this case, approximately five years, there was no showing that there had been any groundswell of case law that would have given the officers warning that their conduct, using deadly force to end a high-speed car chase, was unreasonable

The Court held that the officers were entitled to summary judgment and reversed the decision of the Sixth Circuit Court of Appeals, remanding the case for further proceedings.

**FULL TEXT OF OPINION:** [http://www.supremecourt.gov/opinions/13pdf/12-1117\\_1bn5.pdf](http://www.supremecourt.gov/opinions/13pdf/12-1117_1bn5.pdf)

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<sup>4</sup> 543 U.S. 194 (2004)